U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31507489

Date: JULY 10, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks to classify himself as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen]'s entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) and the Director specifically analyzed the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(vi), (viii)-(ix). On appeal, the Petitioner generally asserts that the Director "did not consider or review the submitted evidence" and he resubmits a copy of his brief provided in response to the Director's request for evidence (RFE). In the RFE response brief, the Petitioner asserted that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(v), (viii)-(ix). The Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(vi)-(vii) or (x), thereby waiving these criteria. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)).[1] The Petitioner does not overcome the Director's denial for the reasons discussed below.

Before turning to the specific eligibility criteria, we first note that, on appeal, the Petitioner emphasizes the number of pages of documents he submitted in response to the Director's RFE and he objects to "the brief time USCIS took to review [his response]." The Petitioner also emphasizes on appeal that his RFE response consisted of "crystal clear evidence in an easy-to-follow 5670-page document and appendices," implying that a review of such a volume of information should not be challenging. We further note that, at the time the Petitioner submitted the Form I-140, Immigrant Petition for Alien Workers, he also submitted a Form I-907, Request for Premium Processing Service, "to request faster processing of [the] Form I-140." Department of Homeland Security, U.S. Citizenship and Immigration Services, *All Forms*, https://www.uscis.gov/forms/all-forms/. There is no mechanism provided by either statute or regulation for petitioners to request an exact number of processing days between a benefit request filing date and the date of the decision on the request. We further note that the number of pages of evidence is not an indicator of the probative value of that evidence, and the RFE response in general contains the same or similar information already in the record, which the Director need not discuss repetitiously. Therefore, we do not agree with the Petitioner's assertion that

[1] We note that, in the RFE response brief, the Petitioner asserted that the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v) twice, without specifically addressing the criteria at 8 C.F.R. § 204.5(h)(3)(vi)-(vii) or (x).

the Director erred in "the brief time USCIS took to review" the RFE response. Regardless, as discussed below, the Petitioner has not satisfied at least three of the 10 initial evidentiary criteria required for eligibility.

> *Documentation of the [noncitizen's] receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Director acknowledged that the Petitioner submitted copies of the following documents:

- A Weidmuller Klippon Award from [redacted] generally dated "1990/91";
- A Safety Award from [redacted] dated 2004; and
- A Project Excellence Award from [redacted] dated 2010.

The Director also acknowledged two certificates of registration and an academic diploma in the record; however, the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i) regarding "prizes or awards for excellence in the field of endeavor" does not contemplate certificates of registration or academic diplomas. The Director noted that the Petitioner submitted statements regarding the awards; however, the Director observed that the Petitioner "did not submit independent, documentary evidence to establish that the awards are nationally or internationally awards [sic] for excellence in the field." Therefore, the Director concluded that the Petitioner did not demonstrate that he received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(i).

As noted above, the Petitioner generally asserts on appeal that the Director "did not consider or review the submitted evidence." In the RFE response brief, the Petitioner asserted that his "exceptional work and significant contributions to the fields of [e]ngineering and [m]anagement have been recognized with the prestigious one-time Excellence and Achievement Award from [redacted] widely recognized as the pinnacle of [e]ngineering and [m]anagement excellence worldwide." However, the submitted evidence does not establish that the Petitioner received such an award, nor does it demonstrate that this award is "widely recognized as the pinnacle of [e]ngineering and [m]anagement excellence worldwide," as he asserts.

Instead, the Petitioner provided a copy of a Project Excellence Award given by [redacted] to the Petitioner dated 2010. The Project Excellence Award states that it "is made in recognition of [the Petitioner's] outstanding commitment to complete all assigned tasks and projects in time and within the scope of work and set cost," not that it recognizes excellence in the field of endeavor, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(i). In turn, the record contains a copy of a Safety Award given by [redacted] to the Petitioner "for his continuing outstanding performance and commitment towards the health, safety and environment program of the . . . Construction of [redacted] . . . project." Both the Project Excellence Award and the Safety Award appear to be an internal company awards, given by an employer to its employees, based on the employee's contributions to the employer and its particular projects and endeavors. Therefore, non-employees do not appear to be eligible for either award, and neither award appears to be based on objective contributions to the field of endeavor beyond contributions to the particular

employer. More specifically, the record does not establish how these particular internal employer-employee awards are "nationally or internationally recognized prizes or awards," as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The record also contains a copy of a Weidmuller Klippon Award given by the [redacted] Division of Technology to the Petitioner in 1991, which indicates that it is "for [t]he student achieving best results on the National Diploma in Engineering Course." However, the Petitioner does not establish that it is awarded for excellence in the field of endeavor; rather, the record indicates that it is given to [redacted] students for their results in academic coursework relative to other students enrolled there at the same time. In turn, the record does not establish through objective, probative evidence that the Weidmuller Klippon Award—issued to students, not members of a particular field of endeavor—is "nationally or internationally recognized," as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(i).

For the foregoing reasons, the record does not sufficiently establish the Petitioner's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(i).

> *Documentation of the [noncitizen's] membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Director acknowledged that the Petitioner submitted evidence of his membership in the American Society of Mechanical Engineers (ASME) and the Jordanian Engineers Association (JEA), to which the Petitioner appears to refer interchangeably as the Jordanian Chartered Distinguished Engineers Syndicate. However, the Director observed, "the [P]etitioner did not submit evidence, such as the constitution or bylaws of the associations, to establish that the associations require outstanding achievements of their members, as judged by recognized national or international experts in their field." Therefore, the Director concluded that the record does not contain documentation of the Petitioner's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

As noted above, the Petitioner contends on appeal that the Director "did not consider or review the submitted evidence." In the RFE response brief, the Petitioner described the ASME and the JEA and he asserted that they are "reputable institutions" and his membership therein satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

As the Director observed, the record does not establish, through objective documentary evidence, that the associations of which the Petitioner is a member require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Although the Petitioner submitted a document written in English that purports to be a summary of "documents required to register engineers in the Jordanian Engineers Association," neither that document nor the remainder of the record reflects that applications to the JEA are "judged by recognized national or international experts in their disciplines or fields," as required by the criterion

at 8 C.F.R. § 204.5(h)(3)(ii). Moreover, that document indicates that "academic achievements" may qualify applicants for membership in lieu of "exceptional industrial, practical, technical, [or] service experiences" and the copy of the JEA membership certificate in the record indicates that the extent of the Petitioner's qualifications at the time he was awarded membership in 1995 was "the engineering degree certificate [he] obtained from the [redacted] in the United Kingdom, dated 06/27/1994." Neither the JEA membership certificate nor the remainder of the record indicates how the Petitioner accomplished "outstanding achievements" and what achievements he accomplished as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(ii). Further, this lack of clarity is notable since the Petitioner was given membership in the JEA only one year after he completed his engineering degree program.

In turn, the record does not contain evidence of the ASME's membership criteria, and the copy of the Petitioner's ASME membership certificate in the record does not elaborate on how he qualified for this membership.

Therefore, the record does not establish that the Petitioner is a member of associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields and it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

> *Published material about the* [*noncitizen*] *in professional or major trade publications or other major media, relating to the* [*noncitizen's*] *work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation*. 8 C.F.R. § 204.5(h)(3)(iii).

The Director acknowledged that the Petitioner submitted copies of "reports prepared by the [P]etitioner in the course of his duties and employment as an engineer," noting that "the plain language of this criterion requires that the published material be about the [P]etitioner, not by the [P]etitioner," The Director observed that the Petitioner did not submit material about him and his work in the field published in relevant media. Therefore, the Director concluded that the record does not contain evidence of published material about the Petitioner in professional or major trade publications or other major media, relating to his work in the field for which classification is sought, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

As noted above, the Petitioner generally asserts on appeal that the Director "did not consider or review the submitted evidence." In the RFE response brief, the Petitioner asserted that his own published documents satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

As the Director explained, the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) contemplates published material about the individual seeking first-preference classification, not information that an individual seeking first-preference classification published. Although the published material must relate to the work of the individual seeking first-preference classification, and the work must be in the field for which classification is sought, the criterion nevertheless contemplates "material about the [noncitizen]," not merely material published by the individual about the individual's work. Because the Petitioner did not submit material about him, relating to his work in

the field for which classification is sought, published in professional or major trade publications or other major media, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

> *Evidence of the* [*noncitizen's*] *original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Director acknowledged that the Petitioner submitted letters of recommendation that discuss the Petitioner's skills and personal characteristics; however, the Director observed that the letters of recommendation are conclusory in nature and they are not corroborated by independent, documentary evidence. The Director also noted that the Petitioner submitted "a screenshot from an unidentified source, [redacted] However, the Director explained that, because the screenshot from an unidentified source excludes both the Petitioner's name and its source, it is not evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. Therefore, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v).

As previously discussed, the Petitioner asserts on appeal that the Director "did not consider or review the submitted evidence." In the RFE response brief, the Petitioner summarized articles he asserted he authored in publications he described as "key publications related to published trade work in [e]ngineering and management industries." The Petitioner also contends that his published articles have "major significance in the field."

Aside from the Petitioner's own statements, the record does not establish, through objective, probative evidence, how the articles he authored have "major significance in the field," whether the field of engineering, management, or another field. For example, as noted, the Director explained that the letters of recommendation do not provide objective, probative evidence of how the Petitioner's articles have "major significance to the field," as required by the criterion at 8 C.F.R. § 204.5(h)(3)(v). Because the record does not establish how the Petitioner's articles—to the extent that the record establishes he authored articles—or any of his other original contributions have "major significance to the field" of engineering, management, or any other field, it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v).

> *Evidence that the* [*noncitizen*] *has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

In addressing this criteria, the Director pointed to submitted copies of bank statements and pay stubs dated 2022 and 2023 in the record, and the Petitioner's assertion that this evidence reflected high salaries. However, the Director observed that "the [P]etitioner did not submit sufficient evidence to establish that he commands a 'high salary' compared to other engineers, nor was enough information provided about the top engineers in his field," citing *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Because the record does not sufficiently establish, through independent, probative evidence, how the Petitioner's salary compares to others in the field, the Director concluded that it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

Again, on appeal, the Petitioner contends that the Director "did not consider or review the submitted evidence." In the RFE response brief, the Petitioner summarized his income during certain months of 2022 and 2023, and he asserted that his income "has consistently fallen within the high salary range." However, as the Director explained, the criterion at 8 C.F.R. § 204.5(h)(3)(ix) contemplates salaries or other remuneration for services "in relation to others in the field." Neither the copies of bank statements and pay stubs dated 2022 and 2023 nor the remainder of the record establish the salary range of others in the fields of engineering and management, or more specifically among engineering project managers with roles similar to the Petitioner. Because the record does not establish the salary range of others in the field, it does not establish whether the Petitioner's salary or other remuneration for services was high in relation to others in the field, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

We need not determine whether the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and(viii) because, even if it did, the record would not satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, we reserve our opinion regarding whether the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(v)-(vi). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established he received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.